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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN MAINZER; JAMES H. DUVAL, a minor, by and through JAMES DUVAL, as Guardian ad Litem; and W. T., a minor, by and through RUSSELL TAIT, as Guardian ad Litem; individually and on behalf of all others similarly situated,

Case No. CV 11-01726 LHK PSG
**DECLARATION OF FERNANDO
TORRES REGARDING THE
VALUE OF INJUNCTIVE RELIEF**

Plaintiffs,

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FACEBOOK, INC., a corporation; and DOES 1-100.

Defendants.

REPLY DECLARATION OF FERNANDO TORRES
REGARDING THE VALUE OF INJUNCTIVE RELIEF
Case No. CV 11-01726 LHK PSG

1 1. I, FERNANDO TORRES, declare and state as follows:
2 2. I have been retained as an expert by Plaintiffs' attorney to consult with them
3 concerning the factual issues presented in the above case.
4 3. I am a professional economist in the State of California and have over 30 years'
5 experience in applied and theoretical economics. In the course of this experience, I have been a
6 consultant, a professor, and a business manager. Both my undergraduate and post-graduate
7 degrees are in economics, the latter with a concentration in econometrics. Since at least 2004, I
8 have specialized in the analysis and valuation of intellectual property and intangible assets. I
9 am a member and Chief Economist of IPmetrics LLC, an intellectual property consulting firm.
10 Attached hereto is a copy of my most current curriculum vitae setting forth in detail my
11 qualifications and experience.

12 4. Additionally, I have served as a consultant on numerous cases involving intellectual
13 property infringement issues, including rights of publicity and valuing the misappropriation of
14 peoples' names and likenesses for commercial use. I have experience in complex commercial
15 litigation cases nationally.

16 5. I have spent over 50 hours consulting in this case. I have reviewed hundreds of
17 documents that are pertinent to the calculation of damages in this case, including:

- 18 a. Plaintiff's Second Amended Complaint;
- 19 b. Order Granting In Part And Denying In Part Defendant's Motion To Dismiss;
- 20 c. Plaintiff's Statement of Facts;
- 21 d. Depositions of Chris Plambeck, John Hegeman and Gokul Rajaram;
- 22 e. Deposition Exhibits 32, 48, 326, 323, 366, 376, 448, 451, 488, 524, 581, 583,
23 586, 588, 589, 592, 596, 612, 618, 623, 654, 682, 684, and 685;
- 24 f. Additional Bates Stamped Documents FB_FRA 1037, 1138-1140, 1879-1881,
25 69757, 69758, 99715-99719, 99757-8, 128219-20

26 6. Furthermore, in the course of my work in this case, I have reviewed and relied upon
27 the following authoritative references:

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1
DECLARATION OF FERNANDO TORRES
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
Case No. CV 11-01726 LHK PSG

- 1 a. "Facebook Ads and Sponsored Stories" Facebook, 2011;
- 2 b. J. Brown, A.J. Broderick, and N. Lee, "Word of mouth communication within
- 3 online communities: Conceptualizing the online social network." Journal of
- 4 Interactive Marketing, Elsevier, Vol. 21, No. 3, 2007, pp 2-20;
- 5 c. R. Hof, "Facebook's New Advertising Model: You" Forbes, Dec. 5, 2011;
- 6 d. A. Lipsman, G. Mudd, Mike Rich, and S. Bruich, "The Power of Like. How
- 7 brands reach and influence fans through social media marketing," a White Paper
- 8 collaboration between comScore and Facebook, July 26, 2011;
- 9 e. J. Kistner, "Facebook's Best Kept Secret: Building Conversions And Revenue
- 10 With Ads For Fans" whitepaper, 2011, Webtrends, Inc.

11 These are the types of materials experts in my field typically rely on when completing
12 assignments such as mine in this case.

13 7. Also in connection to my work in this case, I authored an extensive declaration
14 explaining the methods by which I intended to calculate the damages to the class members for
15 their use in Sponsored Stories ads. I prepared for and was subject to a deposition by
16 defendant's counsel based on my declaration. I read the declaration in opposition to Plaintiffs'
17 motion for class certification of Dr. Randolph Bucklin as well as his deposition testimony and I
18 authored a rebuttal declaration thereto. I provided two possible models for analyzing the value
19 of the class members' endorsement as used in Sponsored Stories ads. I know that this case
20 involves over 100 million class members, many of whom have been featured in hundreds if not
21 thousands of Sponsored Stories ads.

22 8. I have reviewed the injunctive relief agreed to by the parties in this case and have
23 discussed the terms therein. I have been asked to provide a valuation of this injunctive relief.

24 9. The injunctive relief includes relief in the form of (1) a revision of the Facebook
25 Terms, section 10.1 that clarifies to users that they give Facebook permission to use their name
26 and likeness in Sponsored Stories ads, (2) a mechanism that will allow users to see and control
27 which actions they have taken that will lead to their being featured in Sponsored Stories ads,

1 (3) additional provisions requiring that users under 18 years of age requires that they represent
 2 that they received parental consent to be featured in Sponsored Stories ads, (4) additions to
 3 Facebook's "Family Safety Center" that explain Sponsored Stories ads and, in appropriate
 4 circumstances, enable parents to prevent their children from being featured in Sponsored
 5 Stories ads, and (5) an opportunity to Plaintiffs' counsel to review Facebook's statements
 6 regarding advertising and ensure that Sponsored Stories are clearly identified as ads.

7 10. I believe this injunctive relief provides a proper vehicle for informed consent, thus
 8 negating the violation of the right of publicity at scale for the class.

9 11. Using a sample of data in a previous declaration, I calculated the estimated actual
 10 value that the use of the class in Sponsored Stories ads contributed to Facebook's revenue in
 11 the year 2011 was approximately [REDACTED] (approximately [REDACTED] per month).
 12 Assuming this amount constitutes the average incremental revenue generated for Facebook by
 13 the use of the class members in Sponsored Stories ads, the estimated value as of the present
 14 date (17 months from the launch of the ads to June 28, 2012) is approximately [REDACTED].
 15 This value, in my opinion, represents the pool of revenue from which the class would have
 16 been given the opportunity to negotiate compensation had Facebook given the class members
 17 the opportunity to negotiate it.

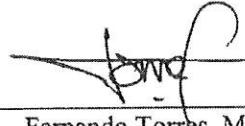
18 12. Because Facebook will now be required to allow the class members control in
 19 determining when they will be featured in Sponsored Stories ads, as outlined in Paragraph 9
 20 above, the class members now have the opportunity to control the use of what is essentially a
 21 [REDACTED] /month advertising asset. Without this injunctive relief, it is my view that the class
 22 members would be denied the control of this asset. Therefore, assuming Facebook would
 23 continue to deny users the ability to negotiate from the incremental revenue their use in
 24 Sponsored Stories ads generated for Facebook, and it would continue doing so for
 25 approximately the same duration in time as has already passed, thus the value of the injunctive
 26 relief is [REDACTED] at a minimum for the next 17 months alone.

27 13. Based on the facts presented to me in this case and my understanding of the legal
 28

1 issues, I consider \$73 million for the next 17 months an accurate and adequate valuation of
2 injunctive relief provided the class members. Another 12 months of the injunctive relief would
3 be worth an additional \$51.6 million

4 14. I declare under the penalty of perjury and under the laws of the United States of
5 America that the forgoing is true and correct and based upon my personal knowledge and/or
6 professional opinions, and that if called upon to testify, I could verify the accuracy of the same.

7 This document was executed in the city of San Diego, California on June 13, 2012.

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10 By: 
11 Fernando Torres, MSc

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DECLARATION OF FERNANDO TORRES
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